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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,896	02/13/2002	Joy M. Campbell	P04890US1	6473
21186	7590	08/24/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			BERTOGLIO, VALARIE E	
			ART UNIT	PAPER NUMBER

1632

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,896

Applicant(s)

CAMPBELL ET AL.

Examiner

Valarie Bertoglio

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,6,10-14 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,10-14 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on N/A is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's reply dated 06/21/2006 has been received. Claims 2-5,7-9,15,16 and 18-30 have been cancelled. Claims 1,6,10-12,14 and 17 have been amended. Claims 1,6,10-14 and 17 are pending and under consideration in the instant office action.

Claim Objections

The objection to claims 5 and 6 is withdrawn in light of Applicant's amendment to the specification.

Claim Rejections - 35 USC § 112-2nd paragraph

Claims 1,6,10-14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 6 are unclear because of the phrase "by weight of the poultry's water supply." It is unclear by this phrase whether the spray-dried serum is actually added to the water supply or if it is measured in proportion to the water supply but administered as a dried substance. In light of the teachings in the specification, for the purpose of examination, the claims are interpreted as though the phrase reads "by weight in the poultry's water supply". Claims 10-14 and 17 depend from claim 1.

Claim 14 is unclear because of the phrase "during all stages of the life cycle". It is not clear if the phrase is intended to mean administration is continuous though all stages of the life

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cycle or that it is administered once in each life cycle, or that there is one administration that can occur at any life cycle stage.

Double Patenting

The rejection of claims 1-4, 8,9, 11-14 and 17 under the judicially created doctrine of obviousness-type double patenting is withdrawn in light of Applicant's amendments to the claims. The '576 patent did not teach or suggest addition of spray-dried serum to water. However, a new obviousness type double patenting rejection is present below.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,6,10-14 and 17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-8 of U.S. Patent No. 6,004,576 in view of US 6,086,878.

Claim 1 is drawn to a method of increasing the yield of breast meat and decreasing the yield of thigh and leg meat from poultry comprising administering to poultry a supplement comprising spray-dried animal plasma at a concentration of about 0.05%-3.0% by weight in the poultry's water supply. Claim 6 limits the concentration of the serum in the water to 0.1%-1.5%.

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Claim 10 requires that the source of the serum be a transgenic animal. Claims 11 and 12 add the limitation that the source of the animal plasma is a livestock animal. Claim 13 limits the poultry species of claim 1. Claim 14 limits the supplement to being administered to at any phase of the life cycle of the poultry. Claim 17 requires that the administration of the serum increase the breast meat yield by about 6-8% by weight.

The methods of claims 1-3 and 7 of '576 encompass methods of increasing weight gain of an animal comprising administering to animals a supplement comprising spray dried animal plasma. Claim 1 of '576 is drawn to increasing the weight of any species of animal, claim 7 of '576 limits the animal species to those including chicken, duck and turkey, which are poultry as claimed in claims 1 and 13 of the instant invention. Claim 2 limits the administration to oral administration and claim 3 limits the amount to up to 15% by weight of the animal ration. The claims are not limited to administration of dry serum granules and while water constitutes an animal ration, the specification of '576 does not teach addition of the granules to water.

However, Adalsteinsson taught administering spray dried egg yolk to newly hatched chickens as a feed supplement for the purpose of increasing muscle mass (column 12, lines 6-16). Adalsteinsson taught the egg yolk source of the antibodies can be substituted with blood plasma (serum) of the target animal, which was a chicken (column 8, line 65) and is a livestock animal as claimed in claims 11 and 12. Adalsteinsson also taught mixing the spray-dried source in drinks. Because water is a drink that is fed to poultry, the teachings of Adalsteinsson include the addition of the spray dried antibody source to water (column 9, lines 47-49).

With respect to the claim limitation set forth in claims 1 and 6 limiting the percent composition of plasma in the water, it would be obvious to use the claimed percent compositions

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as it would require only routine optimization for the skilled artisan to arrive at these limitations to obtain a water comprising the plasma composition that maximally dissolves the composition, offers benefit to the poultry and does not exhibit a taste that deters consumption. See MPEP 2144.05. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The rejection of claims 1-4,8-14 and 17 is maintained under 35 U.S.C. 102(b) as being anticipated by Weaver (US 6,004,576, 1999) is withdrawn in light of Applicant's amendments to the claims. Weaver did not teach administering the spray-dried plasma (serum) through the animal's water supply.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject

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matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The rejections of claims 1,6,10,11,13,14 and 17, under 35 U.S.C. 103(a) as obvious over Adalsteinsson (US 6,086,878, effective filing date August 21, 1997) is withdrawn in favor of the following new rejection.

Claims 1,6,10-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver (US 6,004,576, 1999) in view of Adalsteinsson (US 6,086,878, effective filing date August 21, 1997).

Claim 1 is drawn to a method of increasing the yield of breast meat and decreasing the yield of thigh and leg meat from poultry comprising administering to poultry a supplement comprising spray-dried animal plasma at a concentration of about 0.05%-3.0% by weight in the poultry's water supply. Claim 6 limits the concentration of the serum in the water to 0.1%-1.5%. Claim 10 requires that the source of the serum be a transgenic animal. Claims 11 and 12 add the limitation that the source of the animal plasma is a livestock animal. Claim 13 limits the poultry species of claim 1. Claim 14 limits the supplement to being administered to at any phase of the life cycle of the poultry. Claim 17 requires that the administration of the serum increase the breast meat yield by about 6-8% by weight.

The methods of claims 1-3 and 7 of '576 encompass methods of increasing weight gain of an animal comprising administering to animals a supplement comprising spray dried animal plasma. Claim 1 of '576 is drawn to increasing the weight of any species of animal, claim 7 of '576 limits the animal species to those including chicken, duck and turkey, which are poultry as claimed in claims 1 and 13 of the instant invention. Claim 2 limits the administration to oral administration and claim 3 limits the amount to up to 15% by weight of the animal ration. The

claims are not limited to administration of dry serum granules and water constitutes an animal ration, however, the specification of '576 does not teach addition of the granules to water.

However, Adalsteinsson taught administering spray dried egg yolk to newly hatched chickens as a feed supplement for the purpose of increasing muscle mass (column 12, lines 6-16). Adalsteinsson taught the egg yolk source of the antibodies can be substituted with blood plasma (serum) of the target animal, which was a chicken (column 8, line 65) and is a livestock animal as claimed in claims 11 and 12. Adalsteinsson also taught mixing the spray-dried source in drinks. Because water is a drink that is fed to poultry, the teachings of Adalsteinsson include the addition of the spray dried antibody source to water (column 9, lines 47-49).

Neither Weaver nor Adalsteinsson taught the recited concentrations of serum in water (claims 1 and 6). However, it would be obvious to use the claimed percent compositions as it would require only routine optimization for the skilled artisan to arrive at these limitations to obtain a water comprising the plasma composition that maximally dissolves the composition, offers benefit to the poultry and does not exhibit a taste that deters consumption. See MPEP 2144.05. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

It would have been obvious at the time of filing for one of skill in the art to combine the teachings of Weaver comprising feeding solid spray-dried animal plasma to poultry to enhance desirable characteristics of the poultry as a food product with those of Adalsteinsson involving addition of the spray-dried serum to water. One would have been motivated to administer the

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spray-dried serum through the water source because the water provides an additional means to provide the supplement to the poultry as taught by Adalsteinsson.

One of skill in the art would have a reasonable expectation of success in combining the methods of Weaver with those of Adalsteinsson because Adalsteinsson taught that one could dissolve the spray-dried material in water, the spray-dried matter is water soluble, and water would not be expected to change the effectiveness of the beneficial components of the spray-dried plasma.

Thus the claimed invention as a whole was clearly prima facie obvious at the time the claimed invention was made especially in the absence of sufficient, clear and convincing evidence to the contrary.

It is noted with respect to claim 10, requiring that the source of plasma be a transgenic animal, that as set forth by Applicant (see page 8, paragraph 4 of Applicant's Remarks dated 03/03/2005), the claim does not recite that the transgene causes the plasma to be more effective. As such, the transgenic animal is merely a source of animal plasma that is made obvious by Weaver.

Response to Applicant's arguments regarding Adalsteinsson

Although the rejection of the claims as being obvious over Adalsteinsson alone has been withdrawn, Applicant's arguments pertain to the new rejection set forth above, and are addressed below.

Applicant argues that the Examiner's assertion that Adalsteinsson taught using spray-dried plasma is false. Applicant points to the pertinent passage in Adalsteinsson that fails to specify that the plasma added to the water is spray-dried. However, the invention is drawn to use

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of spray-dried animal products including egg yolk, milk and blood. The teachings in the specification are drawn specifically to use of spray-dried egg yolk. At col. 8, lines 60-65, Adalsteinsson recites that while egg yolk are the preferred source, milk, whole blood, serum or plasma can be used. It is a highly reasonable interpretation of this statement that the milk, blood and blood components would be spray-dried in the same manner as the yolk. In fact, arguably, this is the more logical interpretation. There is no indication in the specification that other sources would not be spray-dried in the same manner as the egg yolk.

Claim Rejections - 35 USC § 102/103

The rejection of claims 1 and 10 under 35 U.S.C. 102(b) as being clearly anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Weaver (US 6,004,576, 1999) is withdrawn in light of Applicant's of the inclusion of the claims in the preceding rejection under 35 USC 103(a).

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Conclusion

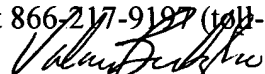
No claim is allowed.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Valarie Bertoglio whose telephone number is (571) 272-0725. The examiner can normally be reached on Mon-Thurs 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735735. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Valarie Bertoglio
Examiner
Art Unit 1632